IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

RCRev..No. 282 of 2007()

(AGAINST JUDGMENT DATED 29/06/2007 IN RCA.8/2006 OF THE RENT CONTROL APPELLATE AUTHORITY, PALAKKAD AGAINST ORDER DATED 27/03/2006 IN RCP.13/2005 OF THE RENT CONTROLLER, OTTAPPALAM)
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REVISION PETITIONER/APPELLANT/RESPONDENT:

JAMES JOB,
SON OF KANDAMPARAMBIL MATHEW JACOB,
OTTAPALAM MARY QUEEN'S LAB PROPRIETOR,
OTTAPALAM TALUK.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI

RESPONDENTS: RESPONDENT/PETITIONER:
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1. **M/S. NEELIMA COIMBATORE FINANCE (P) LTD.**
   11/463, HARIKKARA STREET, PALAKKAD, REPRESENTED
   BY THE MANAGING DIRECTOR, V. EASWARDAS,
   SON OF THE LATE GOVINDANKUTTY NAIR, AGED 52 YEARS,
   PALAKKAD.

2. **ABDUL RAHIMAN HAJI, AGED 56 YEARS,**
   SON OF KUTTY HASSAN HAJI, VETTIKATTIL VALLAPUZHA
   KURUVATTUR AMSOM, OTTAPALAM.

3. **MUHAMMED ASHRAF, AGED 32 YEARS,**
   SON OF KUNHIMOIDU HAJI, MUSLIM, BUSINESS,
   VELUTHOTHODI HOUSE, VARAODE DESOM, OTTAPALAM.

BY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 24/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &

HARUN-UL-RASHID, JJ.

R.C.R. NO. 282 OF 2007

Dated 24th August. 2007.

ORDER

Balakrishnan Nair, J.

The tenant is the revision petitioner. The first respondent is the landlord, who was the petitioner before the Rent Controller. The respondents 2 and 3 were supplementary respondents, who got themselves impleaded on the ground that they have got the petition schedule building assigned in their favour by the landlord.

2. The brief facts of the case are the following: The revision petitioner was a tenant under Sri.P.Vijayagopalan. The first respondent herein purchased the schedule building from the said Vijayagopalan. The tenant/revision petitioner herein attorned to the new owner. The first respondent filed the application for eviction under Sections 11(2) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The tenant raised a contention under the second proviso to Section 11(1), denying the title of the landlord. The Rent Control Court

considered the matter and rejected the said contention, by order dated 27.3.2006. The tenant appealed. The same also met with the same fate. Hence this revision.

3. According to the tenant, Mr.Vijayagopalan continued to be the owner. There was no evidence to show that the petition schedule building was assigned to the first respondent herein. But, the first respondent produced the sale deed, the document evidencing mutation and also the receipt issued by the Village Officer, accepting basic tax from him. Relying on those documents, the Rent Controller held that the contention raised under the second proviso to Section 11(1) lacks bona fides. Before the appellate authority a contention was raised that those documents were not marked in evidence and therefore, the order of the Rent Controller is untenable. But, the appellate authority also found that the denial of title in this case is not bona fide. The appellate authority noticed that the tenant does not claim any right over the property. According to him, the building still continues to be with the original landlord. But, the original landlord does not have such a case. The appellate authority also found that the non-marking of the documents by the Rent Controller did not cause any prejudice, especially, in view of the contention of the tenant that the sale document is a sham document. The person who executed the document

does not have such a case. Execution of a document can be, normally, attacked in that manner only by a person, who has right over the property. Third parties like a tenant cannot raise such a contention. So, we are of the view that the appellate authority rightly confirmed the decision of the Rent Controller that the denial of title by the tenant is made without any bona fides.

In the result, the R.C.R fails and it is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

HARUN-UL-RASHID, JUDGE.